

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	
In the Matter of Contract Controversy:)	DECISION
)	
Savannah River Charters & Tours, Inc.)	CASE NO.: 2007- 132
v.)	
The Citadel)	
)	POSTING DATE:
The Citadel Contract No. A702332)	
Provide One 55 Passenger Motor Coach)	DECEMBER 7, 2007
<u>Transportation of the Baseball Team</u>)	

This matter is before the Chief Procurement Officer (CPO) under authority of South Carolina Code section 11-35-4230 pursuant to a request for resolution of a contract controversy from Savannah River Charters & Tours, Inc. (SRC&T). In the letter, SRC&T requested restitution from The Citadel in the amount of \$7,531.80 for breach of contract.

Before commencement of the administrative review, the CPO attempted to settle the controversies between the parties pursuant to South Carolina Code section 11-35-4230(3). This attempt was unsuccessful. Thereafter, in order to resolve the matter, the CPO conducted a hearing on November 27, 2007. Appearing before the CPO were SRC&T, represented by Orlando Hamlett, President/Chief Executive Officer and The Citadel, represented by Mark Brandenburg, Esq., General Counsel.

DISCUSSION

On January 31, 2007, The Citadel issued request for quotations [RFQ] no. Q7031-RE-02/12/2007 asking bidders to quote prices for providing The Citadel baseball team with a 55 passenger motor coach for transportation to its games. SRC&T offered the lowest quotation. On February 13, 2007, The Citadel issued a statement of award to SRC&T for charter motor coach transportation for the period of March 1 – May 19, 2007 for \$14,800. That same day, The Citadel issued purchase order no. A702322 to SRC&T authorizing payment of \$15,847.21, which includes applicable taxes, for transportation of The Citadel baseball team during the 2007 season; a total of eight trips as follows:

<u>Date</u>	<u>Destination</u>
March 1, 2007	Charleston International Airport
March 20, 2007	Rock Hill, SC
March 29 - April 1, 2007	Dillsboro, NC
April 12 - 15, 2007	Boone, NC
April 20 -22, 2007	Huntersville, NC
May 3 – 6, 2007	Greensboro, NC
May 7 – 9, 2007	Greenville, NC
May 17 – 19, 2007	Greenville, SC

SRC&T provided the transportation and received payment for the trips on March 1, March 29, April 12, and April 20, 2007. The trip planned for March 20, 2007 was cancelled due to rain.

When the trip scheduled for May 3 arrived, SRC&T dispatched a motor coach to The Citadel, but the driver encountered problems with the motor coach's air conditioning. It arrived at The Citadel at the scheduled time (2:00 departure), but without air conditioning. The coaching staff determined that a six hour ride to Greensboro, NC in May was unacceptable without air conditioning, the team opted to arrange alternate transportation. On May 4, 2007, after communicating by telephone with Mr. Hamlett, John Walker, Director of Procurement Services at The Citadel cancelled the contract for cause by letter. On May 6, 2007, The Citadel amended its purchase order to cover the trips actually provided by SRC&T, reducing the commitment to \$10,761.83, and cancelling the trips scheduled for May 3, May 7, and May 17. According to both parties, The Citadel paid SRC&T \$10,761, which covered all trips actually provided.

SRC&T'S ARGUMENT

SRC&T objects to the cancellation of the contract and requests the remaining contract amount of \$4,339.¹ SRC&T argues, "These were not grounds for termination. The contract was wrongfully terminated and we are seeking restitution." SRC&T argues that a repair shop [Ken's Repair Shop] released the motor coach for the May 3 trip indicated that it was ready to go. However, as the SRC&T driver was in route to The Citadel, the driver called Mr. Hamlett and informed him that he had a problem with the air conditioning. Mr.

¹ SRC&T amended its original request of \$7,531.80 to \$4,775 in a September 24, 2007 letter to the CPO and agreed to the amount of \$4,339 during the hearing.

Hamlett suggested a possible solution that the driver tried twice without success. He stated that he could not dispatch another motor coach because SRC&T's only other motor coach was in use. Mr. Hamlett attempted to arrange alternate transportation for the team without success. He does not dispute actual events of May 3, nor does he request payment for that trip that SRC&T did not provide. He does request payment for the remaining trips listed on the purchase order [May 7 and May 17, 2007].²

THE CITADEL'S ARGUMENT

The Citadel officials viewed SRC&T's performance as consistently inadequate and in violation of the RFQ. They viewed the May 3 incident as the last straw. They argued that SRC&T's performance had been less than desirable throughout the contract term, including other incidents during every trip involving maintenance problems and non-conformance with the terms of the contract including use of an outdated motor coach, which violated the requirements of the RFQ and contributed to SRC&T's operational problems.

The Citadel argued that SRC&T's performance had been inadequate or in direct violation of the contract on several trips. For the trip planned for March 20, Citadel officials argue that Annie Washington of SRC&T informed them that SRC&T planned to subcontract it to another carrier in violation of the contract provisions on subcontracting. The game was rained out, however, so the trip never occurred. The March 20 trip was merged with the trip scheduled for March 29, 2007 trip to Dillsboro, NC. During the March 29, 2007 trip, Citadel officials argued that SRC&T violated a contract provision by stopping on the way home to Charleston to refuel the motor coach instead of refueling it during the game or other down time. Citadel officials also noted that on the Dillsboro trip, the motor coach blew a tire, which took an hour and one-half to fix. On the April 12, 2007 trip to Boone, NC, Citadel officials argued that SRC&T utilized a subcontractor (Cavalier)

² Mr. Hamlett sought the full contract amount for these trips. Mr. Hamlett provided no evidence of his actual damages in the event The Citadel was in breach of the contract. In a breach of contract action, the "measure of damages is the loss actually suffered by the contractee as the result of the breach" not the gross amount of the contract. *South Carolina Finance Corp. of Anderson v. West Side Finance Co.*, 236 S.C. 109, 114, 113 S.E.2d 329, 335-36 (1960). Mr. Hamlett offered no method, formula or evidence of his actual loss and thus it would have been impossible to compute his actual damages even if he had prevailed with his claim. *See, Collins Holding Corp. v. Landrum*, 360 S.C. 346, 601 S.E.2d 332 (2004).

without their approval in violation of the RFQ. On May 3, 2007, when SRC&T's bus arrived without air conditioning, Citadel officials were forced to frantically search for alternate transportation. They eventually found another motor coach line to accept the trip, but the team departed hours late, missed a free meal in Greensboro, and arrived at their hotel after midnight.

The Citadel argues that the performance issues involving the SRC&T motor coaches were due to SRC&T's use of an outdated motor coach, a 1996 model, in violation of the RFQ.

The Citadel notes that it compensated SRC&T for every trip actually provided. Further, The Citadel was forced to find alternate transportation on May 3 for \$3,000, on May 7 for \$3,000, and on May 17 for \$1,400; a total of \$7,400. In total, The Citadel paid the alternate carriers \$525 more than the prices agreed to with SRC&T.

SRC&T'S REBUTTAL

Mr. Hamlett responded that the subcontractor was never actually used for the March 20, 2007 trip, as the game was rained out. Regarding the March 29, 2007, Dillsboro, NC trip, he acknowledged that he stopped to refuel, but noted that fuel was quite high in Dillsboro. He also noted that this was the only time that SRC&T stopped to refuel a motor coach with the team aboard. Regarding the tire blowing out, he argued that it could happen on any motor coach. Regarding his use of a subcontractor for the April 12 trip to Boone, NC, Mr. Hamlett argued that he had a conflict with scheduling his coach so he made arrangement with Cavalier, another motor coach line, to handle the trip for SRC&T. He stated that Annie Washington of SRC&T had informed Mr. Craig of the conflict and that SRC&T arranged alternate transportation for the team. Mr. Hamlett acknowledged fully the problem with the air conditioning on May 3, 2007. He stated that the coach had been in the repair shop, that it had been cleared by the mechanic, but that the problem had not been fixed. According to Mr. Hamlett, by the time the problem arose the motor coach was in transit to Charleston. He stated that he tried, but was unable to locate alternate transportation.

DETERMINATION

SRC&T's subcontracting the April 12, 2007 trip to Cavalier violated the RFQ in that it reads, in part, "All subcontractors must be approved by The Citadel" [RFQ, p. 12, Subcontracting], but frankly, it seems minor. SRC&T informed Mr. Craig, the team's travel coordinator, in advance that it needed to subcontract the trip, SRC&T arranged for satisfactory alternate transportation, and the trip was unmarred by vehicle problems. The Citadel argued that SRC&T should have sought approval from the Procurement Office, but Richard Edmonds, the procurement manager in charge of the procurement, stated that he probably would have approved the subcontract had he been asked.

SRC&T's fueling the motor coach on the way home from Dillsboro, NC was a violation of the RFQ that reads, "All return trips are straight through from place of departure." [RFQ, p. 10, Item 4.3] This too seems minor in that the delay cost the team a total of twenty-seven minutes [as timed by Mr. Craig on his stop watch] and it only happened once.

SRC&T's loss of a tire on the Dillsboro trip could be a result of age, but actually, it could have happened to any coach.

However, SRC&T's use of a coach 1996 motor coach for the May 3, 2007 trip is a material violation of the RFQ,³ one that would have resulted in SRC&T's quotation being rejected had SRC&T revealed that fact in their quotation. Instead, SRC&T provided insurance verification to The Citadel for a model year 2000 motor coach, which conformed with the requirements of the RFQ, which reads, "The bus age shall not be greater than seven (7) years old" [RFQ cover page, Description], "bus shall not be older than seven (7) years from the date of manufacture" [RFQ, p. 3, Scope of Solicitation], and "bus shall not be older than seven (7) years from the date of manufacture" [RFQ, p. 7, Classification]. It is apparent that SRC&T used this 1996 motor coach for the May 3 trip by the very documents submitted by SRC&T with its request for resolution. In an attempt to demonstrate its attempts to fix the problem with the air conditioning on May 3, 2007, SRC&T attached to its letter to the CPO a service order from Ken's Repair Service that notes the motor coach is a 1996 model.

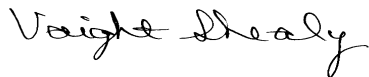
³ The use of a bus for which no insurance certificate was provided placed The Citadel at risk of transporting students in an uninsured vehicle in addition to the fact that the unauthorized substitution of a newer with an older bus was a material breach of the agreement. Restatement (Second) of Contracts § 241 (2007).

Mr. Hamlett acknowledged the age of that motor coach during the hearing. He stated that SRC&T has two motor coaches; a 1996 model and a 2000 model.

The 2000 model meets the age limitation of the RFQ; the 1996 model does not. The age limitation requirement of the RFQ was a matter of responsiveness. One can reasonably assume that the age limitation was inserted in the RFQ as a requirement of quality, performance, and therefore cost, to the bidders. Had SRC&T submitted the insurance verification for its 1996 coach to The Citadel, its quotation would have been rejected. It could not have been waived as a minor informality under 11-35-1520(13).

Therefore, as a performance requirement of the contract, it cannot be waived here. To do so, would be in violation of the contract and patently unfair to the competitors who bid in conformance with the RFQ and lost.

The CPO finds that SRC&T violated the contract with The Citadel and that The Citadel rightfully canceled the contract for cause. SRC&T's request for restitution is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

December 7, 2007

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm